98TH CONGRESS
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REPORT
No. 98-111

EXPANSION OF BOARD OF VETERANS' APPEALS

MAY 12, 1983.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. MONTGOMERY, from the Committee on Veterans' Affairs, submitted the following

REPORT

[To accompany H.R. 2936]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 2936) to amend title 38, United States Code, to increase the authorized number of members of the Board of Veterans' Appeals in the Veterans' Administration, and for other purposes, having considered the same, with a quorum present, reports favorably thereon by unanimous voice vote without amendment and recommends that the bill do pass.

INTRODUCTION

The Subcommittee on Compensation, Pension and Insurance held a hearing on April 6, 1983, on H.R. 1312 and H.R. 2194. Testimony was received from the Disabled American Veterans, AMVETS, the Veterans of Foreign Wars, the American Legion and the Veterans' Administration.

On May 4, 1983, the Subcommittee unanimously recommended that H.R. 2194, to authorize the expansion of the Board of Veterans' Appeals and the designation of certain individuals to act as members of the Board, and for other purposes, be reported to the full Committee. Subsequently, the Subcommittee recommended that H.R. 2936 be reported in lieu of H.R. 2194.

On May 10, 1983, the full Committee, by unanimous voice vote, ordered reported H.R. 2936.

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Background

The mission of the Board of Veterans' Appeals is to equitably decide appeals under all laws administered by the Veterans' Administration and ensure that appellants are accorded due process of law; that they get compassionate, sensitive, responsive and sympathetic consideration on their appeal; and that they receive all benefits to which they and their dependents are entitled.

When a veteran's claim for benefits is denied, the law provides that such veteran may institute appellate action within 1 year from the date of the notice of denial. He or she initiates this action by filing a Notice of Disagreement, which is simply a written statement to the Veterans' Administration that the veteran does not agree with the unfavorable decision. Upon receipt of the Notice of Disagreement, the agency is required to send the claimant a Statement of the Case, which is essentially a brief outlining the contentions of the claimant, recitation of the evidence, citation of the pertinent law and/or regulations, the decision, and reasons for the decision.

The Statement of the Case provides the claimant with detailed information as to the basis for denial of the claim. If the claimant chooses not to pursue the claim after considering the Statement of the Case, no further action is taken. The claimant may submit additional evidence if the claimant believes the decision was based on inaccurate or incomplete information relating to the claim. If the claimant feels that the decision denying the claim was not in accordance with the law and the facts as stated in the Statement of the Case, he or she is advised that upon receipt of the Formal Appeal, within the specified time limit, the claim will receive a completely independent review by the Board of Veterans Appeals.

Present law (38 USC 4001(a)) provides that the Board of Veterans' Appeals shall consist of a Chairman, a Vice Chairman, and such number (not more than fifty) of associate members as may be found necessary to consider and dispose of appeals properly before the Board. This maximum of fifty members was established in the law as of 1946 when the annual case load was approximately 24,000. It has not been changed since that time although the number of appeals to be processed has more than doubled. Additional information relating to the volume of appeals to be considered is contained in a subsequent section of this report, entitled "Oversight Findings."

Summary of the Reported Bill

H.R. 2936, as reported, would give the Administrator discretionary authority to increase the membership of the Board of Veterans' Appeals to sixty-five members. Authority currently exists for a maximum of fifty members.

The bill would also give the Chairman of the Board authority to designate an employee of the Veterans' Administration who is an attorney or physician to act on a temporary basis as a Member of the Board. Such temporary assignments would allow the Chairman to adapt to exigent situations; for example, temporary vacancies caused by prolonged illness, sudden retirement, or when regular Board Members are conducting hearings in regional offices

throughout the country. Such authority would assist in expediting the handling of cases while at the same time ensure that all Board decisions receive a full review by three individuals. The Veterans' Administration's witness at a legislative hearing on April 6, 1983, stated that only qualified and experienced individuals would be assigned as temporary members.

In recommending this legislation, the Committee is expressing its great concern about the length of time required for complete appellate action by the Board. By providing statutory authority for qualified personnel to act on a temporary basis as a member of the Board, it is the expectation of the Committee that the Chairman will utilize this authority on an innovative basis in an effort to improve the Board's timeliness.

It is the intent of the Committee that an acting member is intended to have full decisionmaking authority equivalent to the other two members of a section during the period he or she is designated as acting Board member.

Section-by-Section Analysis of the Reported Bill

Section 1(a) of the bill would amend section 4001(a) of title 38, United States Code, to allow the Board of Veterans' Appeals the statutory authority to expand its size to sixty-five members from the current ceiling of fifty. The amendment would substitute the words "sixty-five" for the word "fifty" in the phase limiting the number of authorized members.

Section 1(b) would amend section 4001 of title 38, United States Code, to provide that the Chairman of the Board of Veterans' Appeals may designate individuals to act as members of the Board of Veterans' Appeals. Not more than one member could be assigned to any Board section.

Section 1(c) would amend title 38, United States Code, sections 4001 and 4002, to delete the word "associate" wherever it appears.

Section 2 of the bill would provide for the bill to become effective October 1, 1983.

Oversight Findings

The Subcommittee on Compensation, Pension and Insurance conducted oversight hearings in 1980, 1981, and 1982 on the performance of the Board of Veterans' Appeals.

During the course of these hearings, it was established that the case load of the Board has increased steadily from 26,000 in 1975 to 42,000 in 1982. During this time, the response time by the Board rose from 69 days in 1975 to 483 days in 1982. Unless some remedy is found, the estimated response time will further increase in 1983 and later years.

It is also noted that when the current ceiling of 50 Board members was established, the Board's annual workload was approximately 24,000 cases. At the same time, the veteran population was less than 17 million. Since that time, the veteran population has increased to approximately 30 million and the case load in 1982 was 42,000.

The oversight activity of the Committee has clearly established the inability of the presently constituted Board of Veterans' Ap-

peals to respond timely to the vastly increased caseload. The Board has substantially increased its productivity but it cannot realistically be expected to cope with the steadily increasing volume of appeals with its present maximum of fifty members.

The Committee feels that one of the elements of due process of law is timeliness of appellate decisions. To ensure such timeliness, adequate staffing at the Board of Veterans' Appeals is essential. To this end, the Committee feels this recommended legislation will serve to reverse the trend in deterioration of timeliness and service.

No oversight findings have been submitted to the Committee by the Committee on Government Operations.

BUDGET STATEMENT

As required by the Rules of the House, the following letter was received from the Congressional Budget Office concerning the cost of H.R. 2936.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C. May 11, 1983.

Hon. G. V. MONTGOMERY,
Chairman, Committee on Veterans' Affairs, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 202 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 2936, a bill to increase the number of members of the Board of Veterans' Appeals in the Veterans Administration, and for other purposes, as ordered reported by the House Committee on Veterans' Affairs, May 10, 1983.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: H.R. 2936.
2. Bill title: None.
3. Bill status: As ordered reported by the House Committee on Veterans' Affairs, May 10, 1983.
4. Bill purpose: To increase the authorized number of members of the Board of Veterans' Appeals in the Veterans Administration (VA), and for other purposes.
5. Estimated cost to the Federal Governemnt:

[By fiscal year, in millions of dollars]

	1984	1985	1986	1987	1988
Estimated authorization level	1.3	3.6	4.4	4.7	4.9
Estimated outlays	1.2	3.4	4.4	4.6	4.9

The costs of this bill fall within function 700.

Basis for estimate: The above estimate assumes that the 15 new Board members and 83 additional full-time equivalent employees (FTEE) for advisory and administrative support staff would be hired over the two-year period following the effective date of the bill, which was assumed to be October 1, 1983. Based on the 1982 ratio of staff to Board Members, it was estimated that 32 attorney advisors and 51 administrative positions would be needed to support the expanded membership of the Board. The average salary level for attorney positions was assumed to be GS-13/2 and for administrative positions, GS-5. The new Board members were assumed to be hired at the ES-5 level. Salary levels were inflated in the outyears by CBO's index of projected federal pay raises. Nonrecurring costs for furniture and equipment were assumed to be $2,000 per new employee. Recurring administrative costs—exclusive of personnel costs—were assumed to be similar to the current nonpersonnel operating costs of the Board per FTEE and were inflated in the outyears by CBO's composite index for federal purchases of nondefense goods and services.

In a letter to Speaker Thomas P. O'Neill on March 10, 1983, Administrator Harry N. Walters stated that the VA budget request for fiscal year 1984 includes $2 million to fund a reorganization and expansion of the staff of the Board of Veterans' Appeals.

6. Estimated cost to State and local governments: The Congressional Budget Office has determined that the budgets of state and local governments would not be directly affected by the enactment of this bill.

7. Estimate comparison: On March 10, 1983, the Veterans' Administration (VA) submitted the following cost estimate of an earlier version of this proposal:

[By fiscal year, in millions of dollars]

	1984	1985	1986	1987	1988
Cost	1.8	1.8	1.8	1.9	1.9

The CBO estimate differs from that of the VA in several respects:

—The VA estimate assumes that all new members and staff would be hired prior to October 1, 1983. The CBO estimate assumes that hiring would be accomplished over a two-year period.

—The VA estimate does not appear to include the cost of additional secretarial and clerical positions, whereas the CBO estimate assumes that the same ratio of non-attorney support positions would be established for the new members as existed in 1982 for current members.

—The VA estimate also does not include one-time expenditures for furniture and office equipment.

—The VA estimate does not assume any future federal pay raises.

—The VA estimate of the full cost of this measure is reduced by the cost of a proposed expansion of the Board's support staff, which is included in the 1984 budget request. The CBO esti-

mate reflects the full cost of the measure over current staff levels.
8. Previous CBO estimate: None.
9. Estimate prepared by: K. W. Shepherd.
10. Estimate approved by:

C. G. NUCKOLS
(For James L. Blum,
Assistant Director for Budget Analysis).

COST

The Committee concurs with the CBO cost estimate.

INFLATIONARY IMPACT STATEMENT

The enactment of the reported bill would have no inflationary impact.

AGENCY VIEWS

The Committee received the following views of the Veterans' Administration on legislation similar to the reported bill:

OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D.C., March 10, 1983.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: There is transmitted herewith a draft bill "To amend title 38, United States Code, to authorize the expansion of the Board of Veterans' Appeals and the designation of certain individuals to act as members of the Board, and for other purposes" with the request that it be introduced so that it may be considered for enactment.

The Board of Veterans' Appeals, established under section 4001(a) of title 38, United States Code, hears and decides appeals concerning the benefits authorized by that title. Board members are appointed by the Administrator of the Veterans Administration with the approval of the President. Section 4003 of the same title provides that the determination by a three-member section of the Board, unanimously concurred in by the three members, constitutes the decision of the Board.

The major purpose of this proposal is to provide authority to the Administrator of Veterans' Affairs to expand the size of the Board of Veterans' Appeals to sixty-five members from the current statutory ceiling of fifty members. This proposal would also provide authority to the Chairman of the Board to designate certain individuals to act as members of the Board. Finally, the draft bill would delete the word "associate," a source of confusion, from the statutory language pertaining to Board members.

The provision to authorize the expansion of the Board is needed in order to meet the increasing appellate caseload of the Board and to eliminate and prevent the recurrence of an accumulation of cases requiring appellate review. Since 1946, when the current ceiling of fifty Board members was placed in the law, the Board's

annual workload has expanded from approximately 24,000 cases to 42,000 in Fiscal Year 1982. At the same time, the veteran population served by the Board has grown from less than 17 million in 1946 to over 30 million at present.

During the past decade, despite its best efforts, the Board has accumulated a backlog of more then 25,000 appeals and a growing delay in the ability of the Board to decide all cases expeditiously and equitably. During Fiscal Year 1982, the receipt of cases for review exceeded those dispatched by approximately 6,200 cases. It is anticipated that this backlog will continue to increase and the Board may slip further behind in its efforts to decide these appeals in an expeditious manner. An expansion of the Board's size would help in alleviating these problems.

A second provision would make it clear that the Chairman of the Board of Veterans' Appeals has authority to designate senior attorneys to act as members of the Board. However, not more than one member could be assigned to any section of the Board members and have temporarily filled vacancies on the Board until new Board members could be officially approved by the White House. This designation has helped the Board in expediting the handling and completion of cases. Not only would this provision clarify the authority of the VA to make those designations, but it would also ensure that a decision has a full review by three individuals.

Finally, this draft bill would provide uniformity in the statutory language pertaining to Board members. While sections 4001(a) and 4002 of title 38 use the term "associate member," sections 4002 and 4003 also use the term "member" without any adjectives. This difference in terminology erroneously implies that there are two types of members of the Board. Actually, all are of equal rank. By deleting the word "associate," the draft bill would correct the erroneous implication.

The first-year cost of section (b), which would increase the size of the Board by 15 members, is estimated to be $915,000 if the new authority is fully exercised. The total first-year cost including necessary support staff and associated costs is estimated to be $3.8 million. However, the Fiscal Year 1984 budget request for the Board of Veterans' Appeals includes $2 million to fund an interim reorganization to permit increased production of appellate decisions. The net first-year cost of the proposal is therefore $1.8 million. Including support staff outlays, the five-year cost of the new authority, if fully exercised, is estimated at $9.1 million.

The Office of Management and Budget advises that there is no objection to the submission of this draft bill to the Congress from the standpoint of the Administration's program.

Sincerely,

HARRY N. WALTERS,
Administrator.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 38 UNITED STATES CODE

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PART V—BOARDS AND DEPARTMENTS

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CHAPTER 71—BOARD OF VETERANS' APPEALS

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§ 4001. Composition of Board of Veterans' Appeals

(a) There shall be in the Veterans' Administration a Board of Veterans' Appeals (hereinafter in this chapter referred to as the "Board") under the administrative control and supervision of a chairman directly responsible to the Administrator. The Board shall consist of a Chairman, a Vice Chairman, such number (not more than [fifty] *sixty-five* of [associate] members as may be found necessary, and such other professional, administrative, clerical, and stenographic personnel as are necessary in conducting hearings and considering and disposing of appeals properly before the Board.

(b) Members of the Board (including the Chairman and Vice Chairman) shall be appointed by the Administrator with the approval of the President.

(c) The Chairman may from time to time designate an employee of the Veterans' Administration who is an attorney or a physician to act temporarily as a member of the Board. A section of the Board may not have as a member more than one employee designated under this subsection to act as a member of the Board.

§ 4002. Assignment of members of Board

The Chairman may from time to time divide the Board into sections of three members, assign the members of the Board thereto, and designate the chief thereof. If a section as a result of a vacancy or absence or inability of a member assigned thereto to serve thereon is composed of a number of members less than designated for the section, the Chairman may assign other members to the section or direct the section to proceed with the transaction of business without awaiting any additional assignment of members thereto. A hearing docket shall be maintained and formal recorded hearings shall be held by such [associate] member or members as the Chairman may designate, the [associate] member or members being of the section which will make final determination in the claim. A sectoin of the Board shall make a determination on any proceeding instituted before the Board and on any motion in connection therewith assigned to such section by the Chairman and shall make a report of any such determination, which report shall constitute its final disposition of the proceedings.

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